IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

WEDNESDAY, THE 4TH APRIL 2007 / 14TH CHAITHRA 1929

WP(C).No. 8720 of 2006(K)

PETITIONER:

SASIKUMAR P.K.,
HIGHER SECONDARY SCHOOL TEACHER,
IRINGANNUR HIGHER SECONDARY SCHOOL P.O.,
IRINGANNUR, KOZHIKODE.

BY ADV. SRI.P.RAMAKRISHNAN
SRI.V.V.NANDAGOPAL NAMBIAR

RESPONDENTS:

1. **THE MANAGER,**
   IRINGANNUR HIGHER SECONDARY SCHOOL,
   IRINGANNUR, KOZHIKODE.

2. **SUMANGALA B.,**
   H.S.A. MALAYALAM, IRINGANNUR HIGHER SECONDARY SCHOOL, P.O. IRINGANNUR, KOZHIKODE.

3. **THE DIRECTOR OF HIGHER SECONDARY EDUCATION, HOUSING BOARD BUILDINGS, SANTHI NAGAR, THIRUVANANTHAPURAM-1.**

4. **THE DEPUTY DIRECTOR (ACADEMICS),**
   OFFICE OF THE DIRECTOR OF HIGHER SECONDARY EDUCATION, HOUSING BOARD BUILDINGS, SANTHI NAGAR, THIRUVANANTHAPURAM-1.

BY ADV. SRI.C.VALSALAN
SRI.K.RAKESH ROSHAN
SRI.P.A.AUGUSTINE(AREEKATTEL)
SRI.RONALD PAUL
GOVERNMENT PLEADER SMT.M.R.SREELATHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/10/2006, THE COURT ON 04/04/2007 DELIVERED THE FOLLOWING:

W.P.(C) NO.8720/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- G.O. DT.27.6.1990.

EXT.P2:- COPY OF THE G.O. DT.13.5.98.

EXT.P3:- COPY OF THE CIRCULAR DT.23.12.99 OF THE 3RD RESPONDENT.

EXT.P4:- COPY OF THE DT.13.4.2000.

EXT.P5:- COPY OF THE PROCEEDINGS DT.5.9.2000 OF THE RESPONDENTS.

EXT.P6:- COPY OF THE ORDER OF APPOINTMENT DT.6.9.2000 ISSUED BY THE 1ST RESPONDENT.

EXT.P7:- COPY OF THE G.O. DT.25.11.2000.

EXT.P8:- COPY OF THE JUDGMENT DT.27.3.03 IN OP. NO.29192/00.

EXT.P9:- COPY OF THE ORDER DT.19.7.03 ISSUED BY THE 3RD RESPONDENT.

EXT.P10:- COPY OF THE JUDGMENT DT.18.11.2005 IN WP(C) NO.2537/03.

EXT.11:- COPY OF THE ORDER DT.22.2.06 ISSUED BY THE 4TH RESPONDENT.

RESPONDENTS EXHIBITS

EXT.R2(a):- COPY OF THE APPOINTMENT ORDER DT.16.8.2000 ISSUED BY THE MANAGER, IRRINGANNUR H.S.S.

/TRUE COPY/

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A.K. Basheer, J.

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W.P(C) No.8720 of 2006

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Dated this the 4th day of April, 2007.

J U D G M E N T

The post of Higher Secondary School Teacher in Malayalam in Iringannur Higher Secondary school in Kozhikode District has remained a hot seat eversince petitioner was selected and appointed to the said post more than 6 years ago. Respondent No.2 who is the rival claimant has managed to keep the issue on the front burner throughout. This is the third round of litigation concerning the same issue. Pursuant to Ext.P8 judgment, the claim made by respondent No.2 was reconsidered. Respondent No.3 took the view that no interference was warranted in the matter of appointment of the petitioner as HSST. The said order, a copy of which is on record as Ext.P9, was again challenged by respondent No.2 before this Court in W.P.No.25370/03. The parties were again relegated to the departmental authority, respondent No.3 herein who was directed to take a fresh decision. In compliance with the directions contained in Ext.P10 judgment, parties were heard by respondent No.3. Therefer Ext.P11 order was passed holding that the selection of the petitioner as HSST was null and void. Accordingly the Manager of the school was directed to terminate the appointment of the petitioner and to conduct a fresh interview for the purpose of selection. Petitioner has challenged Ext.P11 order in this writ petition.

2. It is not in dispute that the school in question was upgraded as Higher Secondary during the academic year 2000-01. It is also not in dispute that the petitioner had commenced his service in the school as High School Assistant in Mathematics on July 22, 1994 and on the date

of upgradation of the school he was working in that capacity. Respondent No.2 had joined service as HSA (Malayalam) in the year 1995. While both the petitioner and respondent No.2 have obtained Master's degree in Malayalam, petitioner passed his B.Ed examination in Mathematics but respondent No.2 obtained her B.Ed degree in Malayalam itself apart from SET qualification in Malayalam. Petitioner has also SET qualification in Malayalam. So the basic issue that arises for consideration is whether respondent No.2 who has her B.Ed degree in Malayalam is entitled to get a preferential treatment as compared to the petitioner who is having his B.Ed degree in Mathematics. The Department has now held in favour of respondent No.2 relying on Ext.P4 order issued by the Government on April 13, 2000 in which it was clarified that all "teachers with B.Ed in the concerned subject would be given preference for appointment as HSST in the concerned subject".

3. Learned counsel for the petitioner submits that the impugned order passed by respondent No.3 (Ext.P11) is ex facie illegal and arbitrary, since petitioner was selected and appointed by a duly constituted selection committee in terms of the direction issued by the Supreme Court. The said appointment had been regularised, yet again, in tune with the directions of the Supreme Court. Therefore the said appointment could not have been reopened or reconsidered.

4. In this context it is necessary to refer to the background under which the petitioner was appointed as Higher Secondary School Teacher in Malayalam in the school. According to the petitioner, he was duly selected and appointed in the school as HSST (Malayalam) on

September 5, 2000. The Selection Committee comprising 3 members was constituted in terms of the interim direction issued by their Lordships of the Supreme Court on December 7, 1999 in SLP (C). 18236-37/98 and connected cases. The relevant portion of the above order passed by the Supreme Court is extracted hereunder:

> "In the case of Private Aided Schools, by way of an interim order, we direct that if suitable qualified candidates among existing teachers already working are available in those schools, they may be appointed purely on "Adhoc Basis" as a stop gap arrangement subject to further orders. These persons shall be appointed on the recommendation of a Selection Committee constituted by the Manager or his Representative of the school, Principal of the school and a Government nominee from the Panel of Officers, consisting of Deputy Director of Education, District Educational Officer of the area and DIET Principal of the District...."

Shortly after the Supreme Court had issued the above direction, the Government had directed the Managers of all aided Higher Secondary Schools to comply strictly with the above direction. Ext.P3 is the true copy of the circular issued by the Government on December 23, 1999.

5. As mentioned earlier, Iringannurr School was upgraded as

Higher Secondary School during the academic year 2000-01. It is not in dispute that there arose a vacancy of HSST in Malayalam in the school after upgradation. It was to the said vacancy that the Committee had selected the petitioner, who was promoted and appointed by the Manager. A true photocopy of the minutes of the Selection Committee has been produced as Ext.P5.

6. The Supreme Court had disposed of the SLPs mentioned above by its judgment dated November 14, 2000 with certain directions one of which was that Higher Scondary School Teachers who had been appointed on an ad hoc basis during the pendency of the cases pursuant to the interim order extracted above, would be regularised. The Government had issued Ext.P7 order on November 25, 2000 in terms of the directions contained in the judgment of the Supreme Court and ordered that all ad hoc appointments of teachers in the aided schools would stand regularised.

7. It is contended by the petitioner that by virtue of the directions issued by the Supreme Court, the appointment of the petitioner had also been regularised and therefore it could not have been reopened or reconsidered . It is true, in Ext.P8 judgment this Court had issued a direction to the Director of Higher Secondary Education to consider the grievance of respondent No.2 that the petitioner was not selected in accordance with the orders and circulars governing selection as well as the directions issued by the Supreme Court. This Court had not considered the question whether the appointment of the petitioner was liable to be reopened or not. A perusal of Ext.P9 order passed by the Director pursuant to Ext.P8 judgment shows that respondent NO.2 had

heavily banked on her superior marks in the qualifying examination and particularly in her B.Ed degree examination in Malayalam. She had also stressed the fact that she was doing research in Malayalam. But the above contentions were overruled by the Director in Ext.P9 order. The order was again subjected to challenge by respondent No.2 before this court which resulted in Ext.P10 judgment as mentioned earlier.

8. It is pertinent to note that in Ext.P10 judgment this Court was not addressed with regard to the question whether the selection of the petitioner can be subjected to a further review since his appointment had been regularised in the light of the directions issued by the Supreme Court. A perusal of Ext.P10 judgment shows that the petitioner herein had in fact brought to the notice of this Court that the selection and appointment made in obedience to the interim direction issued by the Supreme Court, cannot be annulled. Respondent No.2 had produced Ext.R3(a) to R3(d) in support of the above contentions. But this Court was persuaded to consider the merit of the selection process with particular reference to the marks awarded by the members of the Selection Committee to the petitioner and respondent No.2. After considering the above contentions, this Court had disposed of the writ petition with a direction to respondent No.3, the Director of Higher Secondary Education to take "a fresh decision". with particular reference to Ext.P4 order issued by the Government on April 13, 2000. As noticed already the above Government Order had clarified that "candidates with B.Ed in the concerned subject would be given preference for appointment as HSST in the concerned subject".

9. Respondent No.3 has annulled the selection and appointment

of the petitioner relying on the above Government Order ignoring the fact that petitioner had been selected by a duly constituted selection committee in terms of the interim order passed by the Supreme Court. The fact that petitioners' appointment had been regularised by the Government, yet again, in terms of the final direction issued by their Lordships of the Supreme Court, is also overlooked by respondent No.3. I am afraid the order passed by respondent No.3 is liable to be set aside on that short ground. What had been settled, and that too in terms of the direction issued by the Supreme Court, cannot be allowed to be unsettled. Therefore Ext.P1 order is liable to be set aside. I do so.

10. It is true that respondent No.2 has pressed into service Ext.R2(a) order of appointment in respect of another teacher in the school. In Ext.R2(a) it is seen that petitioner was promoted as HSST with effect from August 1, 2000. It is contended by respondent No.2 that the case of the petitioner that he was duly selected by the Selection Committee for promotion to the post of HSST Malayalam on September 6, 2000 is a concocted story. In this context it is pertinent to note that petitioner had a specific case that he was initially appointed as a HSST Malayalam with effect from August 1, 2000. A Selection Committee was duly constituted thereafter. He was selected by the Selection Committee by proceedings dated September 6, 2000 as revealed from Ext.P5. A perusal of Ext.P5 shows that the members of the Selection Committee had signed in the proceedings. More importantly, respondent No.2 had never raised a contention that the Selection Committee had not selected the petitioner. Her only contention was that the Selection Committee had not considered her

relative merit and also the direction contained in Ext.P4 order issued by the Government. Therefore Ext.R2(a) will not advance the case of respondent No.2 in any manner.

11. Respondent No.2 has raised a further contention that in view of the observations made in Ext.P10 judgment the selection of the petitioner cannot be sustained. I am afraid the above contention is wholly untenable. As noticed earlier, this Court had only directed respondent No.3 to take a fresh decision in the matter. It is true that certain observations were made by this Court with regard to the marks awarded to the petitioner and respondent No.2 by the Selection Committee. But this Court had not nullified the selection of the petitioner.

12. Having regard to the entire facts and circumstances of the case I am satisfied that petitioner is entitled to succeed. Therefore Ext.P11 order issued by respondent No.3 is quashed.

Writ Petition is allowed.

A.K. Basheer

Judge.

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